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December 13, 2003

U.S. Department of State
CA/OCS/PRI
Adoption Regulations Docket Room
SA-29
2201 C. Street, N.W.
Washington, D.C. 20520

Re: State/AR-01/96 Comments on Hague Convention Intercountry Adoption Regulations

Dear Department of State:

I respectfully submit the following comments on the proposed regulations on intercountry adoption published in the Federal Register on September 15, 2003 (68 FR 54064). I am the adoptive mother of a young daughter from India. The following comments are not submitted on behalf of any other person or entity other than myself.

I wish to comment on Section 96.46 (Using supervised providers in other Convention countries) and the exclusion of agencies, persons or other entities that are accredited or approved by another Convention country (referred to herein as "Convention Country Approved Entities") to provide services from the definition of "supervised providers."

The standards in Section 96.46 are excellent. For example, requiring the foreign supervised provider to prohibit child buying and to clearly state the compensation arrangement for the services to be provided and fees to be charged are exactly the type of provisions needed to accomplish the goals of the Hague Convention in countries where child trafficking and profiteering have been rampant. However, the exclusion of Convention Country Approved Entities from the definition of supervised providers essentially renders Section 96.46 meaningless in countries like India, where every placement agency must be approved by CARA, the Indian government's central authority for adoption. There have been many child trafficking scandals in India during the past two decades because the high cost of intercountry fees paid by adoptive parents outside of India is lucrative. It is disappointing that these abuses would not be curbed by the Hague regulations if the proposed regulations are adopted in their present form.

The preamble states:

> The Department has heard significant concerns about the behavior of individuals and organizations used by adoption service providers to assist them in providing services. The concerns were especially acute about service providers in other countries.
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> The Department shares these concerns but at the same time recognizes that the ability to work with providers in other countries to obtain services that must be rendered abroad is a critical and essential part of intercountry adoption practice. Moreover, many such providers to provide sound and ethical services. The Department does not wish to render it overly difficult to work with these providers, or unnecessarily to penalize those providers that are not the object of these complaints. Furthermore, the Department recognizes that there are limits to its ability to monitor and control the practice of entities abroad not governed by our laws.

Preamble, 68 FR at 54083-54084.

I am concerned that the Department's reasoning for exempting Convention Country Approved Entities from the application of Section 96.46 is that a certain level of illegal practice in intercountry adoption is acceptable on the basis that "many" providers provide ethical services. Combatting cases of egregious child trafficking and illegal profiteering through these regulations to implement the important goals of the Hague Convention should not be watered down to the point of extinction on the basis that there are good organizations that exist. Even though there are good agencies, how can the goals of the Hague Convention be met when no requirements are placed on U.S. agencies to monitor the acts of agencies abroad? U.S. agencies do not work in a vacuum with their international partners. Instead, often times, U.S. agencies form long-lasting partnerships with their international counterparts, U.S. agencies become quite familiar with the workings of the international entity with travel of personnel between the U.S. and international entities occurring frequently. At a minimum, U.S. agencies could be required to stop working with their international partners (regardless of whether or not the international partner has been approved by the sending country) if they have a reasonable basis to believe that the standards of Section 96.46 are being violated.

Please do not create a loophole by excluding Convention Country Approved Entities from the definition of supervised providers and exempt them from the application Section 96.46. Such a loophole would permit unscrupulous and unethical agencies to continue to engage in child trafficking and illegal profiteering which defeats the very purpose of the Hague Convention.

Sincerely,

Usha Rengachary Smerdon